

UNITED STATES
v.
WILLIAM C. SMITH, a/k/a BILL SMITH

IBLA 76-789

Decided February 8, 1977

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring appellant's interest in certain mining claims null and void. OR 15960 (Wash.).

Affirmed.

1. Administrative Procedure: Hearings--Contests and Protests:
Generally--Mining Claims: Contests--Rules of Practice: Government
Contests

Under the Department of the Interior's rules governing contests against mining claims, where an answer to a complaint is not filed within the prescribed time the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the appropriate officer of the Bureau of Land Management. A mining claim may be declared null and void where there was a charge in the complaint of insufficient minerals to constitute a valid discovery.

APPEARANCES: William L. Williams, Esq., Kenmore, Washington, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

William C. Smith appeals from the August 25, 1976, decision of the Oregon State Office, Bureau of Land Management, declaring his interest in the Loree Marie and Little Mike placer mining claims null and void.

[1] The government's complaint was served upon appellant on May 25, 1976. The complaint alleged, inter alia, that minerals have not been found within the limits of the claims in sufficient quantities to constitute a valid discovery, and that the land within the claims is nonmineral in character. Pursuant to 43 CFR 4.450-6, appellant's answer to the complaint was due on June 24, 1976, 1/ but no answer was filed until August 20, 1976. 43 CFR 4.450-7(a) establishes the consequences for failure to file a timely answer:

If an answer is not filed as required, the allegations of the complaint will be taken as admitted by the contestee and the Manager will decide the case without a hearing.

The State Office properly deemed the charges in the complaint as admitted and declared appellant's interest in the claims null and void. Sainberg v. Morton, 363 F. Supp. 1259 (D. Ariz., 1973); United States v. James R. and Sammy B. Ragsdale, 20 IBLA 348 (1975); United States v. Oscar W. Weiss, 15 IBLA 198 (1974).

Appellant may be under the mistaken impression that the claims were declared invalid on the basis of the Act of July 23, 1955, 69 Stat. 367, which, in effect, withdrew certain minerals from location under the mining laws. 2/ Where a valid mining claim had been located for such minerals prior to the Act, the land within the claim did not become "nonmineral" by virtue of the Act, but a claim for

1/ 43 CFR 4.450-6 provides as follows:

"Within 30 days after service of the complaint or after the last publication of the notice, the contestee must file in the office where the contest is pending an answer specifically meeting and responding to the allegations of the complaint, together with proof of service of a copy of the answer upon a contestant as provided in § 4.450-5(b)(3). The answer shall contain or be accompanied by the address to which all notices or other papers shall be sent for service upon contestee."

2/ Appellant stated the following reasons for appealing the State Office's decision:

"1. Contestee was the owner of these properties prior to the enactment of Public Law 167. It is the position of the contestee that Public Law 167 applies prospectively only. Accordingly, the claims were validly filed under pre-existing statutes of the United States and it is not necessary to their validity that they qualify as minerals.

"2. Forfeiture of this claim, if otherwise proper, must proceed under the laws existing at the time of acquisition, or by some subsequent law properly having retroactive effect. This has not been done."

such minerals may be declared valid only if there was a discovery of a valuable mineral deposit as of the effective date of the Act and such minerals remain presently marketable at a profit. Coleman v. United States, 390 U.S. 599 (1968). The requirement that there be such a discovery of a valuable mineral deposit for a valid mining claim stems from the General Mining Law of 1872, 30 U.S.C. § 22 (1970). Without a discovery of a valuable mineral deposit within a mining claim, the claim may properly be declared null and void in appropriate administrative proceedings. Chrisman v. Miller, 197 U.S. 313 (1905); Coleman v. United States, *supra*. Such proceedings include action taken by BLM where an answer is not timely filed. Sainberg v. Morton, *supra*.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson

Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

